

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CITY OF BENKELMAN,
NEBRASKA, A Political
Subdivision,

Plaintiff,

v.

BASELINE ENGINEERING
CORPORATION, A Colorado
Corporation, and LAYNE
CHRISTENSEN COMPANY, A
Delaware Corporation,

Defendants.

7:15CV5003

MEMORANDUM AND ORDER

Today, I consulted with counsel over the telephone. The United States Court of Appeals for the Eighth Circuit reversed (filing no. [45](#); filing no. [49](#)) my decision (filing no. [32](#); filing no. [33](#)) dismissing without prejudice the City of Benkelman's claims against Baseline Engineering Corporation (Baseline) and dismissing Baseline as a party. I had ordered that the City of Benkelman's claims against Baseline proceed to arbitration in Colorado consistent with the terms stated in the parties' July 2009 Contract.

The Court of Appeals reversed and remanded this matter for further consideration of Baseline's "Motion for Dismissal Pursuant to F.R.C.P. 12(B)" (filing no. [12](#)). To satisfy the direction of Court of Appeals in the clearest manner,

IT IS ORDERED that:

- (1) Baseline's "Motion for Dismissal Pursuant to F.R.C.P. 12(B)" (filing no. [12](#)) is denied without prejudice. This is done purely to make a clear record in the manner more particularly described below and to satisfy the command of the Court of Appeals.
- (2) Baseline shall have through and until Friday, October 6, 2017, to file such a motion, and evidence index if required, that is responsive to the opinion of the Court of Appeals.
- (3) The City of Benkelman shall have through and until Monday, November 6, 2017, to submit a responsive brief, and evidence index if required.
- (4) Baseline shall have through and until Monday, November 13, 2017, to submit a reply brief, and evidence index if necessary.
- (5) If limited discovery is required to resolve Baseline's motion, the parties shall make every reasonable effort to arrive at a stipulation as to such discovery, which stipulation shall be filed. The undersigned will then issue an order as appropriate regarding that limited discovery and related rescheduling. If a party believes limited discovery is required but no stipulation is reached due a disagreement, counsel shall contact the undersigned's judicial assistant (Kris Leininger) at 402-437-1640 to schedule a telephone conference with the undersigned and counsel for all parties.

- (6) The Magistrate Judge shall not progress this case until and unless directed to do so by the undersigned.¹ The Clerk shall provide the Magistrate Judge with a copy of this Memorandum and Order.
- (7) The Clerk shall correct the docket and show the City of Benkelman as an active party on the docket sheet.
- (8) The Clerk shall set a case management deadline as follows: November 13, 2017—check for status of motion regarding remand issues.

DATED this 11th day of September, 2017.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge

¹ Plaintiff City of Benkelman's lawsuit against defendant Layne Christensen Company, along with Christensen's counterclaim against the City, remains pending in this court because these parties' dispute involves an entirely different contract. If Layne Christensen Company or the City of Benkelman wish this case to be progressed as to these parties only, they should contact my judicial assistant (Kris Leininger) at 402-437-1640 to schedule a telephone conference with the undersigned and counsel for all parties.